

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 10, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2152

Cir. Ct. No. 1995CF952095

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AARON ANTONIO ALLEN,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
DENNIS P. MORONEY, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Aaron Antonio Allen, *pro se*, appeals an order that denied his petition for a writ of *habeas corpus* and an order that denied his motion to vacate the adverse ruling. The circuit court concluded that Allen's claims are

barred pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We affirm.

BACKGROUND

¶2 This case has a substantial procedural history. In 1998, a jury found Allen guilty of armed robbery and possessing a firearm as a felon. He appealed, and his appointed appellate counsel filed a no-merit report. *See* WIS. STAT. RULE 809.32 (1999-2000).¹ We summarily affirmed. *See State v. Allen*, No. 1999AP2818-CRNM, unpublished op. and order (WI App Aug 1, 2000) (*Allen I*). In 2007, he filed a postconviction motion in circuit court under WIS. STAT. § 974.06 (2007-08). The circuit court rejected his claims as procedurally barred, and this court affirmed. *State v. Allen*, No. 2007AP795, unpublished slip op. and order (WI App Mar. 25, 2008) (*Allen II*). The supreme court accepted the petition for review and affirmed in turn. *See State v. Allen*, 2010 WI 89, ¶¶1-5, 328 Wis. 2d 1, 786 N.W.2d 124 (*Allen III*). In 2012, Allen filed an “amended motion” and a “supplemental motion” for postconviction relief pursuant to WIS. STAT. § 974.06. The circuit court entered orders denying the motions in April 2012. Allen did not appeal those orders.

¶3 With the foregoing as background, we next summarize the proceedings that underlie and control the outcome of this appeal. In June 2012, Allen filed a petition in this court for a writ of *habeas corpus*, alleging that the circuit court “lacked subject matter jurisdiction and personal jurisdiction because the [circuit] court did not issue a warrant or summons upon issuance of the

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

criminal complaint, which Allen claim[ed] was required by WIS. STAT. § 968.02(2).” See *State ex rel. Allen v. Pollard*, 2012AP1273-W, unpublished slip op. (WI App July 30, 2012) (*Allen IV*). We rejected Allen’s claims on their merits.² See *id.* at 3.

¶4 While the petition underlying *Allen IV* was pending in the court of appeals, Allen filed a petition in the circuit court for a writ of *habeas corpus*, and he filed a contemporaneous motion to supplement that petition. In those documents too he alleged that his convictions and sentences are void for lack of subject matter jurisdiction and that the circuit court lacked personal jurisdiction over him because the circuit court did not issue a warrant or summons to launch the criminal proceedings against him. He did not disclose to the circuit court, however, that he was also pursuing the same claims in the court of appeals.

¶5 The circuit court entered an order denying the petition for a writ of *habeas corpus*, concluding that Allen’s claims were procedurally barred by the rules governing litigation under WIS. STAT. § 974.06 developed in *Escalona-Naranjo* and its progeny. The circuit court subsequently entered an order denying Allen’s motion to vacate the adverse ruling. Allen now appeals those circuit court orders.

² We take judicial notice of the proceedings in *State ex rel. Allen v. Pollard*, No. 2012AP1273-W, unpublished slip op. and order (WI App July 30, 2012) (*Allen IV*). “Generally, a court may take judicial notice of its own records and proceedings for all proper purposes. This is particularly true when the records are part of an interrelated or connected case, especially where the issues, subject matter, or parties are the same or largely the same.” *Johnson v. Mielke*, 49 Wis. 2d 60, 75, 181 N.W.2d 503 (1970).

DISCUSSION

¶6 WISCONSIN STAT. § 974.06 is the normal mechanism for a prisoner seeking to raise constitutional and jurisdictional challenges to a criminal conviction after the time for appeal has passed. *See State v. Henley*, 2010 WI 97, ¶¶50, 52, 328 Wis. 2d 544, 787 N.W.2d 350. Issues cannot form the basis for a § 974.06 motion, however, absent a sufficient reason for the prisoner’s failure to raise those issues in a previously filed postconviction motion. *See Escalona-Naranjo*, 185 Wis. 2d at 181-82. Allen asserts that the circuit court erroneously applied the rules governing litigation under WIS. STAT. § 974.06 to his efforts to obtain a writ of *habeas corpus* and, relatedly, he asserts that *Escalona-Naranjo* and its progeny are inapplicable when a defendant challenges the circuit court’s jurisdiction. We need not and will not consider his arguments.

¶7 Regardless of whether *Escalona-Naranjo* barred Allen from presenting his claims to the circuit court, his claims are barred by another principle here. As demonstrated by our summary of Allen’s recent litigation, we considered and rejected the claims that Allen presented in his circuit court petition when we decided *Allen IV*. Our decision in *Allen IV* constitutes the law of the case and should be followed in all subsequent proceedings, including this appeal.³ *See State v. Moeck*, 2005 WI 57, ¶18, 280 Wis. 2d 277, 695 N.W.2d 783.

¶8 To be sure, “the law of the case doctrine is not an absolute rule that must be inexorably followed in every case.” *Id.*, ¶25. Nonetheless, we are satisfied that Allen demonstrates no “‘cogent, substantial and proper reasons’ ...

³ “[T]he law of the case doctrine is applicable to *habeas* proceedings.” *Shore v. Warden, Stateville Prison*, 942 F.2d 1117, 1123 (7th Cir. 1991).

[to] disregard the doctrine and reconsider” our prior ruling. *See id.* (citation and one set of quotation marks omitted). In *Allen IV*, we addressed Allen’s challenges to subject matter jurisdiction and Allen’s related allegations that the circuit court lacked personal jurisdiction over him. He cannot secure further consideration of those same claims by presenting them in the form of an appeal from orders of the circuit court instead of in the form of a petition to this court for a supervisory writ. A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may attempt to repackage the claim. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). We therefore affirm the circuit court’s orders denying relief. *See Farmers Auto. Ins. Ass’n v. Union Pac. Ry. Co.*, 2008 WI App 116, ¶34, 313 Wis. 2d 93, 756 N.W.2d 461 (we may affirm a correct circuit court decision for reasons other than those relied upon by circuit court).

¶9 Before we close, we observe that Allen’s appellate briefs hint at issues in addition to those presented to the circuit court in the documents seeking a writ of *habeas corpus*. We will not address those matters. We do not consider issues raised for the first time on appeal. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

